

Supreme Court of the United States

OCTOBER TERM, 1962

No. 783

UNITED STATES, APPELLANT

v.s.

DAVID THOMAS HEALY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

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Original Print

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the Southern District of Florida, Miami Division

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**IN UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA,
MIAMI DIVISION**

THE UNITED STATES

vs.

**DAVID THOMAS HEALY (23) and
LEONARD MALCOLM OETH**

Violation; Kidnapping & Aircraft Piracy
18 1201
49 1472(i)

Attorneys

For U. S.:

EDMOND GONG

For Defendant:

ALVIN GOODMAN for Deft. HEALY
Seybold Building
Miami, Florida
(201) (1090)

Statistical Record

Costs

J.S. 2 mailed

Clerk

J.S. 3 mailed

Marshal

Violation

Docket fee

Title

Sec.

JS 2

X Card

DOCKET ENTRIES

Date
1962

June 6 Indictment filed

**June 15 Order for Warrant of Arrest issued as to David
Thomas Healy. Bond set at \$25,000.00**

Date
1962

June 15	Order for Warrant of Arrest issued as to Leonard Malcolm Oeth. Bond set at \$25,000.00	
Sept. 7	ARRAIGNMENT: HEALY Plea of Not Guilty. 10 days for motions.	
Sept. 7	Oral Motion For Reduction of Bond—Granted Bond reduced to \$10,000.00.—Formal Order to enter.	
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[Clerk's Certificate to foregoing paper omitted in printing.]

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA,
MIAMI DIVISION

No. 287-62-M-Cr.

18 U.S.C. § 1201 (life)

49 U.S.C. § 1472(i)

M/S Death—NLT 20 yrs.

UNITED STATES OF AMERICA

vs.

DAVID THOMAS HEALY, also known as Harrold Moore, and
LEONARD MALCOLM OETH, also known as James A.
Eastham

INDICTMENT—filed June 6, 1962

The Grand Jury charges:

COUNT ONE

That on or about April 13, 1962, in the Southern District of Florida,

DAVID THOMAS HEALY, also known
as Harrold Moore, and

LEONARD MALCOLM OETH, also known
as James A. Eastham

did knowingly and unlawfully kidnap, transport and cause to be transported in foreign commerce from Dade County, Florida, in the United States of America, to the Republic of Cuba, a person, to-wit: Woodruff Mead, by forcing him at gunpoint and against his will to fly an airborne aircraft which he was then piloting, to-wit: a four-passenger Cessna 172, Serial Number 28368, Federal Aviation Agency License N5768A, to the Republic of Cuba, which said kidnapping and transportation was done for the purpose of transporting the said defendants from Dade County, Florida, in the United States of America, to the Republic of Cuba which was accomplished, and after which Woodruff Mead was liberated unharmed from the unlawful custody and control of the said defendants; in violation of Title 18, United States Code, Section 1201.

[fol. 2]

COUNT TWO

That on or about April 13, 1962, in the Southern District of Florida,

**DAVID THOMAS HEALY, also known
as Harold Moore, and**

**LEONARD MALCOLM OETH, also known
as James A. Eastham**

did commit aircraft piracy in that the said defendants, while passengers therein, did, with wrongful intent, seize an aircraft in flight in air commerce by threat of force and violence and did, with wrongful intent, exercise control of an aircraft in flight in air commerce by threat of force and violence, that is, the said defendants did unlawfully force a pilot, Woodruff Mead, at gunpoint and against his will, to fly an airborne aircraft, to-wit: a four-passenger Cessna 172, Serial Number 28368, Federal Aviation Agency License N5768A, from Dade County, Florida, in the United States of America, to the Republic of Cuba, which said aircraft Woodruff Mead was piloting and operating within the limits of a Federal airway at the time it was unlawfully seized by the said defendants and at times thereafter, while under the unlawful control of the said defendants imposed through threat of force and violence, and which said aircraft Woodruff Mead was, at all times pertinent, piloting and operating so as to directly affect safety in interstate, overseas and foreign air commerce, while under the unlawful control of the said defendants imposed through threat of force and violence; all in violation of Title 49, United States Code, Section 1472(i).

A TRUE BILL,

**/s/ Harry P. Cain
FOREMAN**

**EDWARD F. BOARDMAN
UNITED STATES ATTORNEY**

**By: /s/ Edmond J. Gong
Assistant United States Attorney**

[fol. 3]

Form No. 195

No.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

THE UNITED STATES OF AMERICA,

vs.

**DAVID THOMAS HEALY, also known as Harrold Moore, and
LEONARD MALCOLM OETH a/k/a James A. Eastham**

INDICTMENT

**Vio: 18 USC 1201
49 USC 1472(i)**

A true bill,

*/s/ Harry P. Cain
Foreman.*

**Filed in open court this 6th day of June, A.D. 1962.
JULIAN A. BLAKE, CLERK**

**By: /s/ Russell A. Fredrickson
Deputy Clerk.**

Bail, \$.....

GPO 935863

[fol. 3a]

**LET WARRANT FOR ARREST ISSUE AS TO
David Thomas Healy, aka Harrold Moore
BOND SET IN THE AMOUNT OF \$25,000.00**

**LET WARRANT FOR ARREST ISSUE AS TO
Leonard Malcolm Oeth aka James A. Eastham
BOND SET IN THE AMOUNT OF \$25,000.00**

**DATED AT MIAMI, FLORIDA, THIS 14 DAY OF
JUNE, 1962**

**/s/ David W. Dyer
UNITED STATES DISTRICT JUDGE**

[fol. 4]

IN UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA,
MIAMI DIVISION

No. 287-62 CR

[Title Omitted]

[File Endorsement Omitted]

MOTION TO DISMISS—filed September 10, 1962

COME NOW the Defendants by and through their undersigned attorneys, and do hereby move to dismiss the indictment filed herein as to Count One in accordance with Rule 12 of the Federal Rules of Criminal Procedure Title 18 USCA, on the grounds that said indictment fails to charge an offense against the United States of America, in that said indictment Count One does not state sufficient facts to constitute an offense against the United States of America, and further that the evidence before the Grand Jury upon which this indictment is framed was insufficient and incompetent.

Dated at Miami, Dade County, Florida, this 10th day of September, 1962.

SHEVIN, GOODMAN & HOLTZMAN
Attorneys for Defendants
346 Seybold Building
Miami 32, Florida.

By /s/ Alvin Goodman

[fol. 5]

[Certificate of Service omitted in printing]

[fol. 6]

IN UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA,
MIAMI DIVISION

No. 287-62-M-Cr-EC

[File Endorsement Omitted]

UNITED STATES OF AMERICA

vs.

DAVID THOMAS HEALY, also known as Harrold Moore, and
LEONARD MALCOLM OETH, also known as James A.
Eastham

ORDER DISMISSING INDICTMENT—September 17, 1962

THIS CAUSE having come on upon Motion to Dismiss the Indictment filed on behalf of the defendant, David Thomas Healy, and the Court having heard argument of counsel and being fully advised in the premises, it is, thereupon,

ORDERED AND ADJUDGED:

1. That Count One of the Indictment be, and the same is, hereby dismissed, the Court being of the opinion that such count does not state an offense under Title 18, United States Code, Section 1201, in that it fails to allege that Woodruff Mead was kidnapped and held "for ransom or reward or otherwise", the Court construing the word "otherwise" as contained in the Statute to mean some like wrongful goal of the type such as ransom or reward, that is, of some pecuniary profit to the defendants.

2. That Count Two of the Indictment be, and the same is, hereby dismissed, the Court being of the opinion that the aircraft alleged to have been pirated is not "an aircraft in flight in air commerce" as defined in Title 49, United States Code, Section 1472(i), the Court construing the quoted language of the Statute as being applica-

8
ble only to commercial airliners engaged in the carriage of goods and persons for hire.

3. That the outstanding warrant for the arrest of Leonard Malcolm Oeth upon this Indictment be, and the same is, hereby canceled.

DONE AND ORDERED at Miami, Florida, this 17th day of September, 1962.

/s/ Emmet C. Choate
UNITED STATES DISTRICT JUDGE

cc. U. S. Attorney (Gong)
U. S. Marshal (2)
Alvin Goodman, Esquire

[fol. 7]

IN UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA,
MIAMI DIVISION

No. 287-62-M-Cr.-EC

[Title Omitted]

[File Endorsement Omitted]

PETITION FOR REHEARING—filed October 17, 1962

The United States of America, by and through its undersigned United States Attorney, petitions this Honorable Court for a rehearing of the Motion to Dismiss both counts of the Indictment filed herein on behalf of the defendants, and further moves this Court to vacate its Order dismissing Counts I and II of the Indictment entered herein on September 17, 1962 and filed herein September 19, 1962; and as grounds therefor the United States of America states as follows:

(1) That this Court's Order dismissing Count I of the Indictment recites that the Court construes the word "otherwise" as contained in Title 18, United States Code, Section 1201 (the Kidnapping Statute) to mean some like wrongful goal of the type such as ransom or reward that is of some pecuniary profit to the defendants. Such a construction of the statute is contrary to that found in the decided case of *Gooch v. United States* (1936), 297 U.S. 124, in which the Supreme Court held that holding to prevent the captor's arrest was within former section 408a of this title punishing holding for "reward or otherwise" since if the word reward as commonly understood is not broad enough to include benefits expected to follow prevention of arrest, such benefits fall within the broad term "otherwise". In *Sanford v. United States*, 169 F.2d 71, the court stated the offense was complete under [fol. 8] former section 408a of this title without any other or additional "holding" of victim that the "holding" which was implicit in the kidnapping and interstate

transportation of the victim for purpose of robbing him. In *United States v. Parker*, 103 F.2d 857, the court stated that under former section 408a of this title specifically penalizing transportation in interstate commerce, a person kidnapped and held for "ransom or reward or otherwise" Congress by phrase "or otherwise" intended to include any object of a kidnapping which the perpetrator might consider of sufficient benefit to himself to induce him to undertake it, and did not intend to restrict the act to cases involving pecuniary benefit to kidnappers, and in *Brooks v. United States*, 199 F.2d 336, the court held that the argument that the abduction and transportation of persons flogged was not for ransom or reward or other benefits to the abductors, did not preclude conviction of violation of this section.

In *Brooks v. United States*, *supra*, the court stated that the kidnapping statute as passed in 1932 required that the transported person be held for "ransom or reward." In the amendment of 1934 Congress enlarged the purpose and coverage of the act by inserting the words "or otherwise, except, in the case of a minor, by a parent thereof." The purpose of the amendment was set forth in the report of the Senate Judiciary Committee (Senate Report No. 534, 73rd Congress 2d Session):

"The object of the addition of the word 'otherwise' is to extend the jurisdiction of this act to persons who have been kidnapped and held, not only for reward but for any other reason."

In the *Brooks* case the court noted that lower federal courts have held that interstate transportation of a kidnapped person for the following purposes is punishable under the act: (1) The extortion of a confession to enhance the reputation of the kidnapper as a detective. (2) Securing the services of a kidnapped person by the kidnappers. (3) Robbery and the prevention of reporting of the crime. (4) Securing transportation in the victim's automobile. (5) The transportation of the kidnapper to aid his escape from penal confinement. (6) The placing of the victim in a house of prostitution. (7) The rape of the victim. The cases so holding the above are cited at page 337 in the *Brooks* opinion.

The Government may not have specifically called these cases to the attention of the Court at the time of the original hearing on the Motion to Dismiss.

(2) That the Court's Order dismissing Count II of the Indictment recites that the Court construes the language "an aircraft in flight in air commerce" as defined in Title 49, United States Code, Section 1472(i), as being applicable only to commercial airliners engaged in the carriage of goods and persons for hire. The Government would urge upon the Court, on rehearing, the definition of "air commerce" contained in Title 49, United States Code, Section 1301, which encompasses the operation of any aircraft in any Federal airway or where it may endanger safety in interstate and foreign commerce, and the legislative history of the Act contained in House Report No. 958, indicating that the term "air commerce" was used designedly because of its broad scope.

WHEREFORE, the United States of America petitions this Court to enter its order granting it a rehearing of the defendants' Motion to Dismiss and moves this Honorable Court to vacate its Order of September 17, 1962 dismissing Counts I and II of the Indictment and to enter [fol. 10] an order denying said Motion to Dismiss as to both counts.

Dated this 3rd day of October, 1962.

EDWARD F. BOARDMAN
UNITED STATES ATTORNEY

By /s/ Edmond J. Gong
Assistant United
States Attorney

[Certificate of Service omitted in printing]

[fol. 14]

IN UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA,
MIAMI DIVISION

No. 287-62-M-Cr.EC

[Title Omitted]

[File Endorsement Omitted]

ORDER DENYING PETITION FOR REHEARING—
November 5, 1962

THIS CAUSE came on to be heard upon the motion of the plaintiff, United States of America, on Petition for Rehearing, and the Court having heard argument of counsel and being fully advised in the premises, it is, thereupon,

ORDERED AND ADJUDGED that plaintiff's Petition for Rehearing be, and the same is, hereby denied.

DONE AND ORDERED at Miami, Florida, this 5th day of November, 1962.

/s/ Emmett C. Choate
UNITED STATES DISTRICT JUDGE

cc: U. S. Attorney (Pearson)
Alvin Goodman, Esquire
348 Seybold Bldg.
Miami, Florida

[fol. 12]

IN UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA,
MIAMI DIVISION

No. 287-62-M-Cr-EC

[Title Omitted]

[File Endorsement Omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—filed December 5, 1962

I

NOTICE IS HEREBY GIVEN that the United States of America appeals to the Supreme Court of the United States from the Order dated November 5, 1962, and entered November 8, 1962, denying Appellant's Petition for Rehearing and from the Order dated September 17, 1962, and entered September 19, 1962, dismissing the Indictment which charged the defendants, DAVID THOMAS HEALY and LEONARD MALCOLM OETH, in two counts with violations of Title 18, United States Code, Section 1201 and Title 49, United States Code, Supp. III, Section 1472(i). This appeal is taken pursuant to Title 18, United States Code, Section 3731.

II

The Clerk will please prepare a transcript of the record for transmission to the Clerk of the Supreme Court of the United States and include therein the following:

1. Transcript of docket entries.
2. Indictment filed June 6, 1962.
3. Motion to Dismiss filed September 10, 1962.
4. Order Dismissing Indictment dated September 17, 1962, and entered September 19, 1962.
5. Petition for Rehearing filed October 3, 1962.
6. Order Denying Petition for Rehearing dated November 5, 1962 and entered November 8, 1962.
7. This Notice of Appeal to the Supreme Court of the United States.

[fol. 13]

III

The following questions are presented by this appeal:

1. Whether the words "or otherwise" as used in the phrase "held for ransom or reward or otherwise" in the Federal Kidnapping Statute (Title 18, United States Code, Section 1201) are limited in their application to a holding of a kidnapped person for some pecuniary benefit to the defendants.

2. Whether the statute punishing aircraft piracy (Title 49, United States Code, Supp. III, Section 1472(i)), which by its term covers any "aircraft in flight in air commerce" is limited in its application to commercial aircraft engaged in the carriage of goods or persons for hire.

DATED this 5th day of December, 1962, at Miami, Florida.

EDITH HOUSE
UNITED STATES ATTORNEY

By: /s/ Daniel S. Pearson
Assistant United States
Attorney

[fol. 14]

[Clerk's Certificate to foregoing transcript
omitted in printing]

[fol. 15]

SUPREME COURT OF THE UNITED STATES

No. 783, October Term, 1962

UNITED STATES, APPELLANT

vs.

DAVID THOMAS HEALY, ET AL.

ORDER NOTING PROBABLE JURISDICTION—April 15, 1963

APPEAL from the United States District Court for the Southern District of Florida.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.